



The Judiciary, State of Hawai‘i

Testimony to the Senate Committee on Ways and Means

Senator Donovan M. Dela Cruz, Chair

Senator Gilbert S. C. Keith-Agaran, Vice Chair

Wednesday, April 3, 2019 10:20 AM

State Capitol, Conference Room 211

by

Rodney A. Maile

Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 1261, House Draft 1, Senate Draft 1 Relating to Judicial Proceedings.

Purpose: Makes permanent the requirement that decisions in contested case hearings of the Commission on Water Resource Management, Land Use Commission, Public Utilities Commission, Hawaii Community Development Authority, and those involving conservation districts be appealed directly to the Supreme Court, with certain exceptions. Takes effect on June 30, 2019. (SD1)

Judiciary's Position:

In 2016, the legislature enacted Act 48, which allowed certain agency appeals to be filed directly with the Supreme Court, bypassing the circuit courts (including the environmental courts), and the Intermediate Court of Appeals. In accordance with requirements set forth in Act 48 of 2016, on December 20, 2018, the Judiciary submitted to the legislature A Report on Judicial Proceedings setting forth its findings and recommendations regarding the direct appeals (JC11).

With regard to House Bill No. 1261, House Draft 1, Senate Draft 1, the Judiciary offers the following comments and suggested amendments. The Judiciary respectfully recommends that the appellate jurisdiction of the environmental courts be restored for some of the appeals subject to the Act 48 of 2016. The legislature established the environmental courts in 2014 to promote and protect Hawai‘i’s natural environment through consistent and uniform application



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of environmental laws. Accordingly, specialized environmental courts were established in each judicial circuit. Restoring the jurisdiction of the environmental courts will ensure fulfillment of the goals envisioned by the establishment of the environmental courts.

If jurisdiction of the environmental courts is restored, the agency appeals that are the subject of Act 48 of 2016, except those from the State Water Commission, the Public Utilities Commission, and the Hawai'i Community Development Authority, would proceed first to the environmental courts. The Judiciary recommends that if any parties to the cases decided by the environmental courts wish to then seek further appellate review, that those appeals be filed directly with the Supreme Court, bypassing the Intermediate Court of Appeals.

The specialized environmental courts sitting as appellate courts should be able to more quickly address an initial appeal, and after the initial appeal, a further appeal to the Supreme Court may not be required. Proceeding in this manner should also have the advantage of providing a more complete record and focusing and limiting the issues brought to the Supreme Court, which should expedite the Supreme Court's final disposition. If the Judiciary's proposal is adopted, appeals from matters before the State Water Commission, the Public Utilities Commission, and the Hawai'i Community Development Authority would proceed directly to the Supreme Court.

Thank you for the opportunity to comment on this measure.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Ways and Means
Wednesday, April 3, 2019 at 10:20 a.m.

by

Carrie Okinaga, Vice President for Legal Affairs and University General Counsel
University of Hawai'i System

HB 1261 HD1 SD1 – RELATED TO JUDICIAL PROCEEDINGS

Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee:

Thank you for the opportunity to present testimony in support of HB 1261 HD1 SD1, Related to Judicial Proceedings. HB 1261 HD1 SD1 would make permanent Act 48, Session Laws of Hawaii 2016. Act 48 requires that decisions in contested case hearings of the Commission on Water Resource Management, Land Use Commission, Public Utilities Commission, Hawai'i Community Development Authority, and those involving conservation districts be appealed directly to the Supreme Court, with certain exceptions.

The expedited judicial review process under Act 48, removes some of the uncertainty and cost related to land use development by public institutions, like the University. This is particularly important to the formation of public-private partnerships, where private investment in capital public projects is more costly to the public as risk increases. Importantly, the benefits of Act 48 do not come at the expense of judicial oversight.

Based on the foregoing, the University supports HB 1261 HD1 SD1.



To: Senator Donovan Dela Cruz, Chair
Senator Gilbert Keith-Agaran, Vice Chair
Committee on Ways and Means

From: Maunakea Observatories

RE: HB 1261 HD1 SD1 Relating to Judicial Proceedings – In support
Wednesday, April 3, 2019; 10:20 a.m.; Conference Room 211

Through this letter the Maunakea Observatories express their **support** for HB 1261 HD1 SD1 which makes permanent the requirement that decisions in contested case hearings of the Commission on Water Resource Management, Land Use Commission, Public Utilities Commission, Hawaii Community Development Authority, and those involving conservation districts be appealed directly to the Supreme Court, with certain exceptions.

This legislation is crucial for the Maunakea Observatories given that future land authorization for the Maunakea Science Reserve (MKSr), which the University of Hawai'i is now pursuing, may be subject to a contested case, introducing lengthy delays in the land authorization process. The current Master Lease for the MKSR expires at the end of 2033 and the timely renewal of this agreement, reflecting a long-term commitment on the part of the State of Hawai'i to support astronomy, is essential. Everything from facility upgrades to new instrumentation and long-term operations planning requires the State's commitment to enable Maunakea Observatories' operations well beyond the 2033 expiration of the current Master Lease. The numerous international federal funding agencies which sponsor the Maunakea Observatories, including the US National Science Foundation, Canadian National Research Council, NASA, MEXT of Japan, etc. have collectively invested billions of dollars over the 50+ year history of the Maunakea Observatories, most of which has been injected directly into Hawai'i's economy. It is in the interests of the State, Federal sponsors, Maunakea Observatories, and broader community to have timely and complete resolution of contested cases that may arise in the MKSR land authorization process, ensuring continued investments in Hawai'i for the benefit of future generations. HB 1261 HD1 SD1 is one of many important steps needed to ensure a bright future for Hawai'i astronomy and the thousands of people that stand to benefit from Hawai'i astronomy in the decades ahead.

Mahalo,

Director Doug Simons, Canada-France-Hawaii Telescope



Director Pierre Martin, Hoku Kea Observatory



Director Paul Ho, James Clerk Maxwell Telescope (East Asian Observatory)



Director Walter Briskin, Long Baseline Observatory



Director John Rayner, NASA Infrared Telescope Facility



Director Michitoshi Yoshida, Subaru Telescope



Director Klaus Hodapp, UKIRT



Director Hilton Lewis, W.M. Keck Observatory (Keck I and Keck II)

HB-1261-SD-1

Submitted on: 4/1/2019 11:04:58 AM

Testimony for WAM on 4/3/2019 10:20:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Gordon Takaki	Individual	Support	No

Comments:

HB-1261-SD-1

Submitted on: 4/1/2019 11:11:00 PM

Testimony for WAM on 4/3/2019 10:20:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Steve Ueda	Individual	Support	No

Comments: